

# Making our Criminal Justice System *Smaller and Fairer*



*Written by Jasmine McGhee*

In the past two years, communities across the nation have taken a hard look at the foundational practices and philosophies that underpin our entire criminal justice system. This re-examination is necessary and urgent. It's clear that the criminal justice system is embedded with longstanding racism and bias that harms, and too often kills, Black people and people of color.

The sheer size of the U.S. criminal justice system is unsustainable if we are serious about reducing harm. Nearly 3 million people are in prison or jail today. And that number doesn't count all who are affected by the system – the people who may not be incarcerated but are still living with the criminal justice system looming over their lives, including those currently facing criminal charges, those on probation or parole, and those who can't find jobs because of criminal records.

If we want a criminal justice system that is fairer to every person, especially people harmed by its conscious racism and unconscious bias, then one thing is clear: we need a smaller criminal justice system. It won't create racial equity on its own, but we need a system that involves fewer people, over fewer (more serious) issues, and with fewer costs to communities and the governments.

In North Carolina, we've begun this work through Governor Roy Cooper's Task Force for Racial Equity in Criminal Justice. The Task Force was formed following the events of summer 2020 and is co-chaired by North Carolina Attorney General Josh Stein and Associate Justice of the Supreme Court Anita Earls. Our recommendations, developed through collaboration between law enforcement, prosecutors, advocates, impacted people, legislators, and government officials, focus on improving the state's law enforcement and criminal justice systems.

We identified multiple ways to help divert people from the criminal justice system to resources that would provide support and aid that is more effective than incarceration and would reduce long-term harm by criminal justice involvement. These include ending policing practices that are not the most effective for community safety and result in

racially inequitable enforcement, prioritizing prosecutorial practices that focus on public safety, and minimizing the presence of money in our court system.

## STRENGTHENING HEALTH AND COMMUNITY RESOURCES

It's no secret that law enforcement officers today are overburdened by responsibilities they weren't trained for. They're being asked to respond to people dealing with mental health crises, intellectual disabilities, substance misuse, and homelessness. These crises are rooted in our health care or social support systems, not public safety or criminal justice. People and their communities would be better helped by treatment or mental health support, not interaction with law enforcement or incarceration. Far too many people in our jails – nearly 2 million every year – are booked because of a mental health crisis. This is a problem that both law enforcement and reform advocates agree must be solved.

The first step is that local communities build an infrastructure to help those in crisis. That includes partnering with trained mental health and social work professionals to co-respond to crises and 9-1-1 calls and training officers in crisis intervention. These strategies acknowledge the basic reality that many times law enforcement is not the best suited to respond to every situation and therefore should not be asked to.

We must also find innovative solutions and community strategies that help people address their challenges before they become crises – or crimes. Violence prevention programs or more specifically, community violence interventions (CVIs), use a public health approach to tackle violence. These programs, which can be community-based or hospital-based, focus on addressing underlying causes for people at high risk of perpetrating or being victims of violence. At the end of the day, we all want to live in violence-free communities.

## IMPROVING LAW ENFORCEMENT PRACTICES

We need to reexamine the balance of public safety needs and the negative impacts of over-policing. There are too many law enforcement practices that disproportionately harm Black people and people of color that are ultimately are not creating safer communities. Predominantly Black neighborhoods

are overpoliced through law enforcement presence in their neighborhoods, but these same communities don't often get the law enforcement support they need for emergencies.

We also need to rethink what we are policing with an eye toward public safety. That means refocusing on traffic stops to keep drivers and pedestrians safe instead of issuing tickets for regulatory infractions, which account for nearly a third of traffic stops in North Carolina. In regulatory traffic stops, Black drivers are twice as likely to be pulled over as white drivers. Once pulled over, Black drivers are twice as likely to be searched, yet fewer than 10 percent of these searches lead to arrest. These disparities contribute to why communities of color distrust law enforcement. Reducing these types of law enforcement-community interactions will help repair trust and lower the risk of dangerous escalations.

We also need to look at legislation and agency policies that decriminalize or deemphasize low-level crimes, including small amounts of marijuana possession and poverty-based misdemeanors. Despite comparable usage rates, Black North Carolinians are significantly more likely than whites to be charged and convicted for possession of marijuana. And drug enforcement operations often focus disproportionately on minority neighborhoods where housing density and other factors make drug transactions and drug use more visible, though not necessarily more common.

In far too many of these situations, the consequences of criminal justice involvement are not worth any "benefit" of handling social problems as crimes. Ultimately, legislatures and local governments should reduce the scope of the criminal code and local criminal ordinances. In the meantime, law enforcement across North Carolina has started reprioritizing their work to focus on more serious crimes, and the Task Force supports that work.

## RE-EXAMINING THE COURTS

We currently have a criminal legal system that is far too easy to enter and nearly impossible to get out of without serious and lasting collateral consequences. As with law enforcement, these initial stages of the court process give us room to divert people out of permanent or long-term criminal justice involvement. Instead, we can move people with substance use or mental health issues to the appropriate treatment and recovery services. We can also deprioritize prosecuting cases that have historically unfair outcomes for people of color, such as marijuana possession.

Reducing criminal justice involvement is also particularly important for younger people, who often get pulled into the juvenile justice system and are less able to rebuild their lives as adults, leading to recidivism and a greater likelihood of repeated criminal justice involvement.

The Task Force made recommendations that would help stem criminal justice involvement for young people, including by improving training for school personnel and



SROs on the difference between school discipline issues and juvenile justice issues. We also recommended raising the age of juvenile jurisdiction from six to 12 years old, and the legislature recently raised this jurisdiction to 10 in most circumstances. While no other states start jurisdiction at six, most can do more to increase the age of jurisdiction. Children need family and community support, as well as mental and emotional health resources – not jail time.

## PROMOTING FAIRNESS POST-RELEASE

Once a person serves their time, they don't cease to be involved with the criminal justice system. An incarceration record can often overshadow every aspect of a person's life – their ability to get a job, find a home, drive, or vote. Their records often also linger through burdensome fines and fees. Millions of people have to pay traffic fines, court costs, or other fees that make it harder for them to get back on their feet after incarceration or probation.

Reducing criminal justice debt and eliminating it entirely where possible would go a long way to helping people close a chapter after they complete their sentences. It would allow people to fully rebuild their lives, rejoin communities, and gain the kind of stability that helps move them away from criminal justice involvement.

The core of all of these measures, and the other recommendations of the Task Force, is the guiding belief that we must do better for the communities that our criminal justice system serves – even and especially those accused of a crime. Our system should look to eliminate practices that are fundamentally unfair or harmful. And one of the clearest paths to creating a more equitable criminal justice system is by rerouting so many of its overburdened functions to the other parts of our communities that are better equipped to respond to them, and by shrinking the scope of our system overall. By doing so, we'll help build a criminal justice system that serves every person and has more trust in every community.



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